into money. See *Dance v. Seaman*, 11 Gratt. 778; *Sipe v. Earman*, 26 Id. 563; *Brockenborough v. Brockenborough*, 31 Id. 580; *Young v. Willis*, 82 Va. 291; *Paul v. Baugh*, 85 Id. 955; *Norris v. Lake*, 89 Id. 513; 2 Minor's Inst. (4th ed.) 679, 680 and ca. ci.

DEED OF TRUST ON STOCK OF GOODS—Where the owner of a stock of goods executes a mortgage or deed of trust thereon to secure creditors, but retains the right, either by express terms of the deed or by a subsequent agreement, verbal or written, to remain in possession and continue to sell the goods, such a transaction is *per se* fraudulent and void as to creditors and purchasers. The reason is that such a transaction is illusory and is inconsistent with its avowed purpose—permitting, as it does, the grantor to control and enjoy the property as before and to absolutely defeat the entire security. For if he may sell a part of the goods, and pass good title, he may sell all. This power of control and disposition has met with the very general condemnation of the courts. They declare that such a pretended security is a sham and a deceit, and therefore void upon its face. Nor is the objectionable feature removed by a stipulation that the proceeds of sale shall be applied by the debtor to the purchase of other goods to keep up the security to a certain standard. *Perry v. Shenandoah Nat. Bank*, 27 Gratt. 755; *McCormick v. Atkinson*, 78 Va. 8; *Wray v. Davenport*, 79 Va. 19; *Robinson v. Elliott*, 22 Wall. 513; *Harmon v. Hoskins*, 52 Miss. 142. In a valuable note to *Peabody v. Landon* (Vt.), 15 Am. St. Rep. 912–917, will be found an excellent discussion of this subject with a full citation of authorities. As there shown, while the weight of authority and reason sustains the foregoing statement of the law, there is respectable authority to the effect that such a transaction is only *prima facie* fraudulent.

MISTAKES OF LAW—DISTINCTION BETWEEN GENERAL LAW AND PRIVATE RIGHT.—Is a mistake as to the *existence of a right* a mistake of *law*, and so without remedy, even in equity? In Anson on Contracts (2d Am. ed., p. 129), it is said, after quoting the rule *ignorantia juris haud excusat:* "But a distinction is drawn by Lord Westbury in *Cooper v. Phibbs*, L. R. 2 H. L. 170, which was a case of mistaken rights, between two senses in which the word *jus* is used with reference to this rule. 'It is said *ignorantia juris haud excusat;* but in that maxim the word *jus* is used in the sense of denoting general law, the ordinary law of the country. But when the word *jus* is used in the sense of denoting a private right, that maxim has no application. Private right of ownership is a matter of fact; it may be the result also of matter of law; but if parties contract under mutual mistake and misapprehension as to their relative and respective rights, the result is that the agreement is liable to be set aside as having proceeded upon a common mistake.'"

On the difficult question, what mistakes are, and what are not, ground for relief, Prof. Pomeroy, 2 Pom. Equity (1st ed.), secs. 843–849, offers the following rules:

Rule I. "Where the parties with knowledge of the facts, and without any inequitable incidents [as fraud, concealment, misrepresentation, undue influence, violation of confidence, etc.], have made an agreement or other instrument as they intended it should be, and the writing expresses the transaction as it was understood and designed to be made, then . . . equity will not allow a defense, or

grant a reformation or rescission, although one of the parties—and as many cases hold, both of them—have mistaken or misconceived its legal meaning, scope, and effect."

An example under this rule is found in the celebrated case of *Hunt v. Rousmaniere's Adm'rs*, 8 Wheaton 174 (s. c., 1 Peters, 1). In that case a power of attorney to execute a bill of sale of a ship was taken by a creditor from a debtor under the distinct impression, induced by the advice of counsel, that it would be as valid a security, under all circumstances, as a mortgage. The debtor subsequently died; and as the power of attorney was revoked by his death, the security of the creditor was invalidated. But it was held (in strict conformity it will be seen with Rule I, *supra*) that the misapprehension of the parties as to the legal effect of the instrument was no ground for relief even in equity, and of course it would not be at law. (See Bispham's Equity, sec. 187.)

Rule II. "Wherever a person is ignorant or mistaken with respect to his own antecedent and existing private legal rights, interests, estates, duties, liabilities, or other relation, either of property, or contract, or personal *status*, and enters into some transaction, the legal scope and operation of which he correctly apprehends and understands, for the purpose of affecting such assumed rights, interests, or relations, or of carrying out such assumed duties or liabilities, equity will grant its relief, defensive or affirmative, treating the mistake as analogous to if not identical with a mistake of fact." But Pomeroy adds: "It should be carefully observed that this rule has no application to cases of compromise, where doubts have arisen as to the rights of the parties, and they have intentionally entered into an arrangement for the purpose of compromising and settling those doubts. Such compromises, whether involving mistakes of law or fact, are governed by special considerations." And for an exception to this rule in case of money paid under a mistake of law as to legal liability, see 2 Pom. Eq., sec. 851.

An example under this second rule is found in *Bingham v. Bingham*, 1 Vesey Sr. 126, where the defendant sold to the plaintiff an estate, which in fact belonged to the plaintiff already, but which both parties believed, under a mistake caused by misconception of law, to belong to the defendant. Relief was granted by equity, and return of the purchase money was decreed. See Adams' Eq. 190. And in *Lansdown v. Lansdown*, Mosley, 364, where the eldest of three brothers divided land of which the second brother had died seised with a younger brother, under the mistaken impression that the younger brother and not himself was heir at law to the second brother, it was held that he was entitled to relief in equity, and his conveyance to the younger brother was set aside. It will be seen that the elder brother correctly understood the nature and effect of his conveyance to his younger brother, but he never would have made it if he had not been ignorant of the nature and extent of his existing rights in the property. So his mistake was of *private right* and not of *general law*, which distinguishes the case from *Hunt v. Rousmaniere's Adm'rs, supra*. The case of *Zollman v. Moore*, 21 Gratt. 313, does not recognize this distinction, and is criticised by Pomeroy. See 2 Pom. Eq., note to sec. 849.

ACCESSION AS A SOURCE OF TITLE.—This is a doctrine applicable to cases where one man, wilfully or by mistake, unites his property with that of another so closely that severance is impracticable, or bestows his labor on another man's property so